

**BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

**In the Matter of the Accusation and )  
Petition to Revoke Probation Against:)**

**BROWNELL HILLIARD PAYNE, M.D. )**

**Case No. 800-2017-033918**

**Physician's and Surgeon's )  
Certificate No. A26350 )**

**Respondent )**

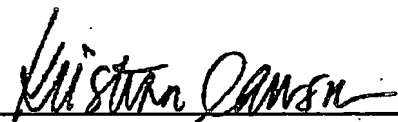
**DECISION**

**The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.**

**This Decision shall become effective at 5:00 p.m. on November 9, 2018.**

**IT IS SO ORDERED: October 11, 2018.**

**MEDICAL BOARD OF CALIFORNIA**



**Kristina Lawson, JD, Chair  
Panel B**

1 XAVIER BECERRA  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 BENETH A. BROWNE  
Deputy Attorney General  
4 State Bar No. 202679  
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8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

13 **BROWNELL HILLIARD PAYNE, M.D.**  
14 **5118 Showboat Lane**  
**Culver City, CA 90230**

15 **Physician's and Surgeon's Certificate No. A**  
16 **26350,**

17 Respondent.

Case No. 800-2017-033918

OAH No. 2018030333

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
22 of California (Board). She brought this action solely in her official capacity and is represented in  
23 this matter by Xavier Becerra, Attorney General of the State of California, by Beneth A. Browne,  
24 Deputy Attorney General.

25 2. Respondent Brownell Hilliard Payne, M.D., is representing himself in this proceeding  
26 and has chosen not to exercise his right to be represented by counsel.

27 3. On or about October 25, 1974, the Board issued Physician's and Surgeon's Certificate  
28 No. A 26350 to Brownell Hilliard Payne, M.D. (Respondent). The Physician's and Surgeon's

1 Certificate was in full force and effect at all times relevant to the charges brought in Accusation  
2 and Petition to Revoke Probation No. 800-2017-033918, and will expire on August 31, 2018,  
3 unless renewed.

#### 4 JURISDICTION

5 4. Accusation and Petition to Revoke Probation No. 800-2017-033918 was filed before  
6 the Board, and is currently pending against Respondent. The Accusation and Petition to Revoke  
7 Probation and all other statutorily required documents were properly served on Respondent on  
8 January 2, 2018. Respondent timely filed his Notice of Defense contesting the Accusation and  
9 Petition to Revoke Probation.

10 5. A copy of Accusation and Petition to Revoke Probation No. 800-2017-033918 is  
11 attached as exhibit A and incorporated herein by reference.

#### 12 ADVISEMENT AND WAIVERS

13 6. Respondent has carefully read, and understands the charges and allegations in  
14 Accusation and Petition to Revoke Probation No. 800-2017-033918. Respondent has also  
15 carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

16 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
17 hearing on the charges and allegations in the Accusation and Petition to Revoke Probation; the  
18 right to be represented by counsel at his own expense; the right to confront and cross-examine the  
19 witnesses against him; the right to present evidence and to testify on his own behalf; the right to  
20 the issuance of subpoenas to compel the attendance of witnesses and the production of  
21 documents; the right to reconsideration and court review of an adverse decision; and all other  
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
24 every right set forth above.

#### 25 CULPABILITY

26 9. Respondent admits the truth of the charges and allegations contained in Accusation  
27 and Petition to Revoke Probation No. 800-2017-033918 and that he has thereby subjected his  
28 license to disciplinary action.

10. For the purpose of resolving the Accusation and Petition to Revoke Probation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and Petition to Revoke Probation, and that Respondent hereby gives up his right to contest those charges.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

### CIRCUMSTANCES IN MITIGATION

12. Except for completion of payment of probation monitoring costs, Respondent successfully completed his probationary period. Respondent is admitting responsibility at an early stage in the proceedings.

## CONTINGENCY

13. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

14. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

1 **DISCIPLINARY ORDER**

2 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 26350 issued  
3 to Respondent Brownell Hilliard Payne, M.D. is revoked. However, the revocation is stayed and  
4 Respondent is placed on probation for two (2) years on the following terms and conditions.

5 1. **STANDARD STAY ORDER.** However, revocation stayed and Respondent is placed  
6 on probation for two years upon the following terms and conditions.

7 2. **COMPLETION OF PAYMENT OF OUTSTANDING PROBATION**  
8 **MONITORING COSTS.** Respondent shall complete payment of currently outstanding probation  
9 monitoring costs estimated at a total of \$24,090 not later than 90 calendar days prior to the  
10 completion of probation. Respondent shall pay a minimum of \$1,200 per month toward the  
11 outstanding probation monitoring costs.

12 3. **NOTIFICATION.** Within seven (7) days of the effective date of this Decision, the  
13 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
14 Chief Executive Officer at every hospital where privileges or membership are extended to  
15 Respondent, at any other facility where Respondent engages in the practice of medicine,  
16 including all physician and locum tenens registries or other similar agencies, and to the Chief  
17 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
18 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
19 calendar days.

20 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

21 4. **SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE**  
22 **NURSES.** During probation, Respondent is prohibited from supervising physician assistants and  
23 advanced practice nurses.

24 5. **OBEY ALL LAWS.** Respondent shall obey all federal, state and local laws, all rules  
25 governing the practice of medicine in California and remain in full compliance with any court  
26 ordered criminal probation, payments, and other orders.

27 6. **QUARTERLY DECLARATIONS.** Respondent shall submit quarterly declarations  
28 under penalty of perjury on forms provided by the Board, stating whether there has been

1 compliance with all the conditions of probation.

2 Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
3 of the preceding quarter.

4 7. GENERAL PROBATION REQUIREMENTS.

5 Compliance with Probation Unit

6 Respondent shall comply with the Board's probation unit.

7 Address Changes

8 Respondent shall, at all times, keep the Board informed of Respondent's business and  
9 residence addresses, email address (if available), and telephone number. Changes of such  
10 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
11 circumstances shall a post office box serve as an address of record, except as allowed by Business  
12 and Professions Code section 2021(b).

13 Place of Practice

14 Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
15 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
16 facility.

17 License Renewal

18 Respondent shall maintain a current and renewed California physician's and surgeon's  
19 license.

20 Travel or Residence Outside California

21 Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
22 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
23 (30) calendar days.

24 In the event Respondent should leave the State of California to reside or to practice  
25 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
26 departure and return.

27 8. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
28 available in person upon request for interviews either at Respondent's place of business or at the

1 probation unit office, with or without prior notice throughout the term of probation.

2 9. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
3 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
4 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
5 defined as any period of time Respondent is not practicing medicine as defined in Business and  
6 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
7 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
8 Respondent resides in California and is considered to be in non-practice, Respondent shall  
9 comply with all terms and conditions of probation. All time spent in an intensive training  
10 program which has been approved by the Board or its designee shall not be considered non-  
11 practice and does not relieve Respondent from complying with all the terms and conditions of  
12 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
13 on probation with the medical licensing authority of that state or jurisdiction shall not be  
14 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
15 period of non-practice.

16 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
17 months, Respondent shall successfully complete the Federation of State Medical Boards' Special  
18 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
19 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
20 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

21 Respondent's period of non-practice while on probation shall not exceed two (2) years.

22 Periods of non-practice will not apply to the reduction of the probationary term.

23 Periods of non-practice for a Respondent residing outside of California will relieve  
24 Respondent of the responsibility to comply with the probationary terms and conditions with the  
25 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
26 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
27 Controlled Substances; and Biological Fluid Testing.

28 10. COMPLETION OF PROBATION. Respondent shall comply with all financial

obligations except as referenced in paragraph 2 above (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

11. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

#### ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into



1 this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and  
2 agree to be bound by the Decision and Order of the Medical Board of California.

3  
4 DATED: April 30, 2018 Brownell Hilliard Payne MD

5 BROWNELL HILLIARD PAYNE, MD.  
6 Respondent

7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
9 submitted for consideration by the Medical Board of California.

10 Dated: August 14, 2018

Respectfully submitted,

11 XAVIER BECERRA  
12 Attorney General of California  
13 E. A. JONES III  
14 Supervising Deputy Attorney General

Beneth A Browne

15 BENETH A. BROWNE  
16 Deputy Attorney General  
17 Attorneys for Complainant

18  
19 LA2017506274  
20 52885888  
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27  
28

**Exhibit A**

**Accusation and Petition to Revoke Probation No. 800-2017-033918**

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BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation and Petition to  
Revoke Probation Against:

**Brownell Hilliard Payne, M.D.**  
**5118 Showboat Lane**  
**Culver City, CA 90230**

**Physician's and Surgeon's Certificate**  
**No. A 26350,**

Respondent.

Case No. 800-2017-033918

**ACCUSATION**

and

**PETITION TO REVOKE PROBATION**

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about October 25, 1974, the Medical Board issued Physician's and Surgeon's Certificate Number A 26350 to Brownell Hilliard Payne, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2018, unless renewed.

3. In a prior disciplinary action entitled "*In the Matter of Accusation Against Brownell H. Payne, M.D.*," Case No. 06-2006-174257, the Medical Board of California issued a decision,

1 effective May 15, 2009 (the "2009 Decision"), in which the Physician's and Surgeon's Certificate  
2 of Respondent was revoked. However, the revocation was stayed and Respondent was placed on  
3 probation for a period of five (5) years with certain terms and conditions.

4 4. In a separate disciplinary action entitled "*In the Petition to Revoke Probation Against*  
5 *Brownell Payne, M.D.*," Case No. D1-2006-174257, the Medical Board of California issued a  
6 decision, effective December 3, 2010 (the "2010 Decision"), in which Respondent's length of  
7 probation stated in the 2009 Decision was increased from five (5) years to six (6) years, with all  
8 other terms and conditions of the 2009 Decision continuing to apply until termination of the six  
9 (6) year probationary period. Respondent was also ordered to complete the PACE Clinical  
10 Training Program within six (6) months of the effective date of the 2010 Decision.

11 5. On or about March 21, 2013, in a disciplinary action entitled *In the Matter of the*  
12 *Accusation and Petition to Revoke Probation Against Brownell Hilliard Payne, M.D.* before the  
13 Medical Board of California, in Case Number D2-2006-174257, Respondent's license was  
14 revoked, the revocation stayed, and Respondent was placed on continued probation for the  
15 sustained allegation of a probation violation relating to his failure to successfully complete a  
16 clinical training program and Respondent was required to comply with the terms and conditions  
17 set forth in the 2009 Decision and the 2010 Decision, referenced above. The March 21, 2013,  
18 Decision and Order of the Board in Case Number D2-2006-174257 is attached as Exhibit A to  
19 this pleading and incorporated here as if fully set forth.

#### 20 JURISDICTION

21 6. This Accusation and Petition to Revoke Probation is brought before the Board, under  
22 the authority of the following laws. All section references are to the Business and Professions  
23 Code unless otherwise indicated.

24 7. Section 2004 of the Code states:

25 "The board shall have the responsibility for the following:

26 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice  
27 Act.

28 "(b) The administration and hearing of disciplinary actions.

1       “(c) Carrying out disciplinary actions appropriate to findings made by a panel or an  
2 administrative law judge.

3       “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of  
4 disciplinary actions.

5       “(e) Reviewing the quality of medical practice carried out by physician and surgeon  
6 certificate holders under the jurisdiction of the board.

7       “(f) Approving undergraduate and graduate medical education programs.

8       “(g) Approving clinical clerkship and special programs and hospitals for the programs in  
9 subdivision (f).

10       “(h) Issuing licenses and certificates under the board's jurisdiction.

11       “(i) Administering the board's continuing medical education program.”

12       8.     Section 2227 of the Code provides that a licensee who is found guilty under the  
13 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
14 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
15 action taken in relation to discipline as the Board deems proper.

16       9.     Section 2234 of the Code, states:

17       “The board shall take action against any licensee who is charged with unprofessional  
18 conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not  
19 limited to, the following:

20       “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
21 violation of, or conspiring to violate any provision of this chapter.

22       “(b) Gross negligence.

23       “(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
24 omissions. An initial negligent act or omission followed by a separate and distinct departure from  
25 the applicable standard of care shall constitute repeated negligent acts.

26       “(1) An initial negligent diagnosis followed by an act or omission medically appropriate  
27 for that negligent diagnosis of the patient shall constitute a single negligent act.

28       “(2) When the standard of care requires a change in the diagnosis, act, or omission that

1 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
2 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
3 applicable standard of care, each departure constitutes a separate and distinct breach of the  
4 standard of care.

5     “(d) Incompetence.

6     “(e) The commission of any act involving dishonesty or corruption which is substantially  
7 related to the qualifications, functions, or duties of a physician and surgeon.

8     “(f) Any action or conduct which would have warranted the denial of a certificate.

9     “(g) The practice of medicine from this state into another state or country without meeting  
10 the legal requirements of that state or country for the practice of medicine. Section 2314 shall not  
11 apply to this subdivision. This subdivision shall become operative upon the implementation of  
12 the proposed registration program described in Section 2052.5.

13     “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and  
14 participate in an interview by the board. This subdivision shall only apply to a certificate holder  
15 who is the subject of an investigation by the board.”

16     10. The probation term extended by the March 21, 2013, Decision remains in effect due  
17 to Respondent's failure to comply with the conditions of probation (Condition 27) as will be set  
18 forth *infra*.

#### 19                                   **FIRST CAUSE FOR DISCIPLINE**

#### 20                                   **(Unprofessional Conduct)**

21     11. Respondent Brownell Hilliard Payne, M.D. is subject to disciplinary action under  
22 section 2234 of the Code in that he engaged in unprofessional conduct when he violated terms  
23 and conditions of probation set forth in the March 21, 2013, Decision and Order of the Board in  
24 Case Number D2-2006-174257. The circumstances are as follows:

25     12. Respondent failed to comply with Condition 30 of the March 21, 2013, Decision and  
26 Order of the Board in Case Number D2-2006-174257, which obligated him to pay the costs  
27 associated with probation monitoring each and every year of probation. Respondent is arrears to

28     ///

1 the Board \$25,986.19 in probation monitoring costs for 2011, 2012, 2013, 2014, 2015, 2016 and  
2 2017.

3 13. Respondent failed to comply with an April 25, 2017, Citation Order which fined him  
4 \$350.00 for failing by March 17, 2017, to make outstanding payments in the amount of \$7,600.00  
5 pursuant to a June 30, 2016, payment plan. Respondent has failed to pay the \$350.00 fine.

6 14. Respondent failed to comply with Condition 27 of the March 21, 2013, Decision and  
7 Order of the Board in Case Number D2-2006-174257, which obligated him to comply with all  
8 financial obligations 120 calendar days prior to completion of probation. Respondent's probation  
9 was to end on September 2, 2017. Respondent's probation is currently tolled pursuant to  
10 Condition 27 of the March 21, 2013, Decision and Order of the Board in Case Number D2-2006-  
11 174257. Respondent has outstanding financial obligations due to the Board in the sum of  
12 \$26,336.95.

### 13 FIRST CAUSE FOR REVOCATION OF PROBATION

#### 14 (Probation Monitoring Costs)

15 15. At all times after the effective date of the March 21, 2013, Decision and Order of the  
16 Board in Case Number D2-2006-174257, Condition 30 stated:

17 "Each and every year of probation, Respondent shall pay the costs associated with  
18 probation monitoring, as designated by the Board. The costs are presently \$3,173.00 but may be  
19 adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and  
20 delivered to the Board or its designee no later than January 31 of each calendar year. Failure to  
21 pay costs within 30 days of the due date is a violation of probation."

22 16. Respondent's probation is subject to revocation because he failed to comply with  
23 Probation Condition 30 of the March 21, 2013, Decision and Order of the Board in Case Number  
24 D2-2006-174257, referenced above. The facts and circumstances regarding this violation are as  
25 follows:

26 17. Respondent failed to pay \$2,973.24 in probation monitoring costs for 2011.  
27 Respondent failed to pay \$4,098.00 in probation monitoring costs for 2012. Respondent failed to  
28 pay \$4,080.00 in probation monitoring costs for 2013. Respondent failed to pay \$4,029.00 in

1 probation monitoring costs for 2014. Respondent failed to pay \$4,106.00 in probation monitoring  
2 costs for 2015. Respondent failed to pay \$3,667.00 in probation monitoring costs for 2016.  
3 Respondent failed to pay \$3,032.95 (prorated) in probation monitoring costs for 2017.  
4 Respondent's probation is currently tolled pursuant to Condition 30 of the March 21, 2013,  
5 Decision and Order of the Board in Case Number D2-2006-174257 because of his failure to pay  
6 the probation monitoring costs set forth above.

## 7 **SECOND CAUSE FOR REVOCATION OF PROBATION**

### 8 **(Completion of Probation)**

9 18. At all times after the effective date of the March 21, 2013, Decision and Order of the  
10 Board in Case Number D2-2006-174257, Condition 27 stated:

11 "Respondent shall comply with all financial obligations (e.g., restitution, probation costs)  
12 not later than 120 calendar days prior to the completion of probation. Upon successful  
13 completion of probation, respondent's certificate shall be fully restored."

14 19. Respondent's probation is subject to revocation because he failed to comply with  
15 Probation Condition 27 of the March 21, 2013, Decision and Order of the Board in Case Number  
16 D2-2006-174257, referenced above. The facts and circumstances regarding this violation are as  
17 follows:

18 20. Respondent failed to comply with all financial obligations 120 calendar days prior to  
19 completion of probation. Respondent's probation was to end on September 2, 2017, but is tolled  
20 pursuant to Conditions 27 of the Decision and Order of the Board in Case Number D2-2006-  
21 174257. Respondent has outstanding financial obligations due to the Board in the sum of  
22 \$26,336.95.

## 23 **DISCIPLINARY CONSIDERATIONS**

24 21. To determine the degree of discipline, if any, to be imposed on Respondent Brownell  
25 Hilliard Payne, M.D., Complainant alleges that on or about March 21, 2013, in a prior  
26 disciplinary action entitled *In the Matter of the [First Amended] Accusation and Petition to*  
27 *Revoke Probation Against Brownell H. Payne, M.D.* before the Medical Board of California, in  
28 Case Number D2-2006-174257, Respondent's license was revoked, the revocation stayed, and



1 Respondent was placed on probation for the sustained allegation of a probation violation relating  
2 to his failure to successfully complete a clinical training program. That decision is now final and  
3 is incorporated by reference as if fully set forth herein.

4 22. On or about February 9, 2011, an interim order of suspension was issued, suspending  
5 Respondent's license and on February 24, 2011, the suspension order was upheld.

6 23. To determine the degree of discipline, if any, to be imposed on Respondent Brownell  
7 Hilliard Payne, M.D., Complainant alleges that on or about December 3, 2010, in a prior  
8 disciplinary action entitled *In the Matter of the Petition to Revoke Probation Against Brownell*  
9 *Payne, M.D.* before the Medical Board of California, in Case Number D1-2006-174257,  
10 Respondent's 5-year probationary period was extended to a total of 6 years, Respondent was  
11 required to successfully complete the clinical practice program within 6 months, and all other  
12 terms and conditions of probation continued to apply. The Petition to Revoke Probation had  
13 alleged that Respondent violated conditions of his probation requiring him to have a practice  
14 monitor, complete and pay for a psychiatric examination and to successfully complete a clinical  
15 training program.

16 24. To determine the degree of discipline, if any, to be imposed on Respondent Brownell  
17 Hilliard Payne, M.D., Complainant alleges that on or about May 15, 2009, in a prior disciplinary  
18 action entitled *In the Matter of the Accusation Against Brownell H. Payne, M.D.* before the  
19 Medical Board of California, in Case Number 06-2006-174257, Respondent's license was  
20 revoked, the revocation was stayed, and Respondent was placed on probation for five years,  
21 including sixty days of suspension, and various terms and conditions including a successful  
22 completion of a clinical training program, a practice monitor and a psychiatric evaluation. Causes  
23 for discipline had included gross negligence, incompetence, dishonest acts and failure to maintain  
24 adequate and accurate medical records. The accusation had alleged facts and circumstances of  
25 Respondent's role as an anesthesiologist for a surgery that led to the patient's death and for  
26 Respondent's subsequent dishonesty regarding his role.

27 Specifically, at an outpatient surgery center on October 22, 2003, Respondent administered  
28 a sedative hypnotic, antibiotic, general anesthetic and paralytic agent for a patient undergoing a

1 septoplasty and turbinate reduction surgery. Five minutes after administering the paralytic agent,  
2 for 10 minutes, Respondent made 9 – 11 unsuccessful attempts to ventilate the patient with direct  
3 laryngoscopy and orotracheal intubation rather than with a laryngeal mask. Respondent admitted  
4 at a deposition under oath that he had not attempted to initiate an airway with a laryngeal mask  
5 and he had not attempted to initiate pharmacological reversal of the muscle relaxant but  
6 subsequently at his physician interview with Medical Board investigators, Respondent explicitly  
7 and repeatedly reversed his prior testimony and asserted that he had attempted to use a laryngeal  
8 mask and to administer medication to reverse the paralytic agent.

9 25. To determine the degree of discipline, if any, to be imposed on Respondent Brownell  
10 Hilliard Payne, M.D., Complainant alleges that on or about April 5, 1993, in a prior disciplinary  
11 action entitled *In the Matter of the Accusation Against Brownell H. Payne, M.D.* before the  
12 Medical Board of California, in Case Number D-3678, Respondent's license was revoked, the  
13 revocation stayed, and Respondent was placed on probation for five years of probation requiring  
14 various terms and conditions including 30 days of suspension, an ethics course, a practice monitor  
15 over Respondent's billings to Medi-Cal, successful completion of an oral clinical examination in  
16 anesthesiology and a community service program requiring Respondent to provide free medical  
17 services at a community or charity foundation or agency for a minimum of 240 hours. Causes for  
18 discipline against Respondent had included dishonest acts, conviction of a substantially related  
19 crime, and knowingly presenting, preparing, making or subscribing to false or fraudulent  
20 insurance claims related to the practice of medicine. Specifically, Respondent had been convicted  
21 of misdemeanor grand theft and had knowingly presented false claims for reimbursement from  
22 Medi-Cal for almost one year by claiming that he had supervised a number of certified registered  
23 nurse anesthetists at two women's medical clinics during surgical procedures, when, in fact, he  
24 had not.

25 ///

26 ///

27 ///

28 ///

1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
3 and that following the hearing, the Medical Board of California issue a decision:

4 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 26350,  
5 issued to Brownell Hilliard Payne, M.D.;

6 2. Revoking the probation that was granted by the Medical Board of California in the  
7 Decision and Order in Case Number D2-2006-174257 and imposing the disciplinary order that  
8 was stayed thereby revoking Physician's and Surgeon's Certificate Number A 26350 issued to  
9 Brownell Hilliard Payne, M.D.;

10 3. Revoking, suspending or denying approval of Brownell Hilliard Payne, M.D.'s  
11 authority to supervise physician assistants and advanced practice nurses;

12 4. Ordering Brownell Hilliard Payne, M.D., if placed on probation, to pay the Board the  
13 costs of probation monitoring, including all outstanding financial obligations under the March 21,  
14 2013, Decision and Order of the Board in Case Number D2-2006-174257; and

15 5. Taking such other and further action as deemed necessary and proper.

16  
17 DATED: January 2, 2018

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

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# **EXHIBIT A**

**February 19, 2013 Decision and Order**

**D2-2006-174257**

*Reginald Low*  
Reginald Low, M.D., Chair  
Panel B

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 TAN N. TRAN  
Deputy Attorney General  
4 State Bar No. 197775  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-6793  
6 Facsimile: (213) 897-9395  
*Attorneys for Complainant.*

7  
8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
10

11 In the Matter of the Accusation & Petition to  
Revoke Probation Against:

12 **BROWNELL H. PAYNE, M.D.**  
13 5118 Showboat Lane  
Culver City, CA 90230  
14 Physician and Surgeon's Certificate No. A  
26350  
15

16 Respondent.  
17

Case No. D2-2006-174257

OAH No. 2011030899

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

18 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-  
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of  
22 California. She brought this action solely in her official capacity and is represented in this matter  
23 by Kamala D. Harris, Attorney General of the State of California, by Tan N. Tran, Deputy  
24 Attorney General.

25 2. Respondent BROWNELL H. PAYNE, M.D. (Respondent) is represented in this  
26 proceeding by attorney George L. Mallory, Jr., whose address is: 1925 Century Park East, Suite  
27 2000, Los Angeles, CA 90067-2701.  
28

3. On or about October 25, 1974, the Medical Board of California issued Physician and Surgeon's Certificate No. A 26350 to Brownell H. Payne, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation & Petition to Revoke Probation No. D2-2006-174257 and will expire on August 31, 2012, unless renewed.

## JURISDICTION

4. On February 4, 2011, Complainant petitioned, *ex parte*, for issuance of an Interim Suspension Order (ISO), suspending the Physician's and Surgeon's certificate of Respondent. On February 24, 2011, Administrative Law Judge Daniel Juarez granted Complainant's Petition for an ISO, which suspended Respondent from practicing medicine, pending a full determination of Respondent's fitness to practice medicine. On March 25, 2011, the parties stipulated and agreed to waive the statutory time limit, pursuant to Government Code Section 11529(f).

5. Accusation & Petition to Revoke Probation No. D2-2006-174257 was filed before the Medical Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation & Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on February 10, 2011. First Amended Accusation & Petition to Revoke Probation No. D2-2006-174257 was filed before the Board on and served on Respondent on or about June 15, 2012. Respondent timely filed his Notice of Defense contesting the original and First Amended Accusation & Petition to Revoke Probation. A copy of the First Amended Accusation & Petition to Revoke Probation No. D2-2006-174257 is attached as exhibit A and incorporated herein by reference.

## ADVICE AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Accusation & Petition to Revoke Probation No. D2-2006-174257. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Accusation & Petition to Revoke Probation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in First Amended Accusation & Petition to Revoke Probation No. D2-2006-174257.

10. Respondent agrees that his Physician and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

## RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary



1 Order shall have no force or effect, except for this paragraph, it shall be inadmissible in any legal  
2 action between the parties, and the Board shall not be disqualified from further action by having  
3 considered this matter.

4 13. The parties understand and agree that facsimile copies of this Stipulated Settlement  
5 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
6 effect as the originals.

7 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
8 the Board may, without further notice or formal proceeding, issue and enter the following  
9 Disciplinary Order:

10 **DISCIPLINARY ORDER**

11  
12 15. It should be noted that in a prior disciplinary action entitled "*In the Matter of*  
13 *Accusation Against Brownell H. Payne, M.D.*," Case No. 06-2006-174257, the Medical Board of  
14 California issued a decision, effective May 15, 2009 (the "2009 Decision"), in which the  
15 Physician's and Surgeon's Certificate of Respondent was revoked. However, the revocation was  
16 stayed and Respondent's was placed on probation for a period of five (5) years with certain terms  
17 and conditions. A copy of the 2009 Decision is attached as Exhibit B and is incorporated herein  
18 by reference.

19  
20 16. It should also be noted that in a separate disciplinary action entitled "*In the Petition to*  
21 *Revoke Probation Against Brownell Payne, M.D.*," Case No. D1-2006-174257, the Medical  
22 Board of California issued a decision, effective December 3, 2010 (the "2010 Decision"), in  
23 which Respondent's length of probation stated in the 2009 Decision was increased from five (5)  
24 years to six (6) years, with all other terms and conditions of the 2009 Decision continuing to  
25 apply until termination of the six (6) year probationary period. Respondent was also ordered to  
26 complete the PACE Program within six (6) months of the effective date of the 2010 Decision. A  
27 copy of the 2010 Decision is attached as Exhibit C and is incorporated herein by reference.  
28

1 17. IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate Number  
2 A26350 issued to Respondent Brownell H. Payne, M.D. is revoked pursuant to the 2009 and 2010  
3 Decisions. However, the revocation is stayed and Respondent's probation is extended for two (2)  
4 additional years with the following terms and conditions of probation. The probationary period  
5 begins from the effective date of this Decision and Order.

6 18. ACTUAL SUSPENSION As part of probation, Respondent is suspended from the  
7 practice of medicine subject to completion and the recommendation by the Physician and  
8 Assessment and Clinical Education (PACE) that Respondent can practice medicine safely.  
9

10 19. STRUCTURED STUDY REGIME/PACE PROGRAM Respondent must enroll in a  
11 structured study regime and shall successfully complete the PACE Program (Condition 16 of the  
12 2009 Decision) prior to August 1, 2013. No further extensions will be given for completion of  
13 the PACE Program.

14 (Condition Precedent)

15 Respondent shall not engage in the practice of medicine until notified in writing by the  
16 Board or its designee of its determination that Respondent is fit to practice safely.  
17

18 20. If Respondent fails to ensure that proof of successful completion of PACE is received  
19 by the Board or its designee prior to 5:00 p.m. of August 1, 2013, the stay of revocation will  
20 automatically be lifted, and without further hearing, Respondent's Physician's and Surgeon's  
21 Certificate Number A26350 shall be revoked, effective immediately. After said revocation,  
22 Respondent may apply for reinstatement of his revoked certificate upon proof of successful  
23 completion of PACE, notwithstanding the waiting period(s) set forth in Business and Professions  
24 Code section 2307.  
25

26 21. MONITORING - PRACTICE. After successful completion of PACE as outlined in  
27 Condition 19 above, Respondent shall submit to the Board or its designee for prior approval as a  
28

1 practice monitor(s), the name and qualifications of one or more licensed physicians and surgeons  
2 whose licenses are valid and in good standing, and who are preferably American Board of  
3 Medical Specialties (ABMS) certified. A monitor shall have no prior or current business or  
4 personal relationship with Respondent, or other relationship that could reasonably be expected to  
5 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
6 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
7 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

8  
9 The Board or its designee shall provide the approved monitor with copies of the Decision(s)  
10 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the  
11 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed  
12 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role  
13 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees  
14 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
15 signed statement for approval by the Board or its designee.  
16

17 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
18 probation, Respondent's practice and billing shall be monitored by the approved monitor(s).  
19 Respondent shall make all records available for immediate inspection and copying on the  
20 premises by the monitor at all times during business hours and shall retain the records for the  
21 entire term of probation.

22 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
23 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
24 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
25 shall cease the practice of medicine until a monitor is approved to provide monitoring  
26 responsibility.  
27  
28

1 The monitor(s) shall submit a quarterly written report to the Board or its designee which  
2 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
3 are within the standards of practice of medicine, and whether Respondent is practicing medicine  
4 safely. It shall be the sole responsibility of Respondent to ensure that the monitor submits the  
5 quarterly written reports to the Board or its designee within 10 calendar days after the end of the  
6 preceding quarter.

7 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
8 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
9 name and qualifications of a replacement monitor who will be assuming that responsibility within  
10 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
11 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
12 notification from the Board or its designee to cease the practice of medicine within three (3)  
13 calendar days after being so notified Respondent shall cease the practice of medicine until a  
14 replacement monitor is approved and assumes monitoring responsibility.  
15

16 In lieu of a monitor, Respondent may participate in a professional enhancement program  
17 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the  
18 University of California, San Diego School of Medicine, that includes, at minimum, quarterly  
19 chart review, semi-annual practice assessment, and semi-annual review of professional growth  
20 and education. Respondent shall participate in the professional enhancement program at  
21 Respondent's expense during the term of probation.  
22

23 21. All other terms and conditions of the 2009 and 2010 Decisions continue to apply and  
24 will continue to apply until the termination of the entire probationary period. Respondent is  
25 hereby bound by those other terms and conditions of the 2009 and 2010 Decisions.  
26

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DATED:

DATED:

Dated: December 10, 2012

TAN N. TRAN  
Deputy Attorney General  
*Attorneys for Complainant*

**Exhibit A**

**First Amended Accusation & Petition to Revoke Probation No. D2-2006-174257**

1 KAMALA D. HARRIS  
Attorney General of California  
2 ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
3 TAN N. TRAN  
Deputy Attorney General  
4 State Bar No. 197775  
California Department of Justice  
5 300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 897-6793  
Facsimile: (213) 897-9395  
7 Attorneys for Complainant

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO June 15 20 12  
BY H. Park ANALYST

8 BEFORE THE  
9 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA

11 In the Matter of the First Amended Accusation  
& Petition to Revoke Probation Against,

Case No. D2-2006-174257

12 BROWNELL HILLIARD PAYNE, M.D.  
13 5118 Showboat Lane  
14 Culver City, California 90230

FIRST AMENDED ACCUSATION &  
PETITION TO REVOKE PROBATION

15 Physician's and Surgeon's Certificate No.  
16 A 26350

17 Respondent.

18  
19 Complainant alleges:

20 PARTIES

21 1. Linda K. Whitney (Complainant) brings this Petition to Revoke Probation solely in  
22 her official capacity as the Executive Director of the Medical Board of California, Department of  
23 Consumer Affairs (Board).

24 2. On or about October 25, 1974, the Medical Board of California issued Physician's and  
25 Surgeon's Certificate number A 26350 to Brownell Hilliard Payne, M.D. (Respondent). The  
26 Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought  
27 herein and will expire on August 31, 2012, unless renewed.  
28

3. In a disciplinary action entitled "In the Matter of Accusation Against Brownell H. Payne, M.D.," Case No. 06-2006-174257, the Medical Board of California issued a decision, effective May 15, 2009 (the "2009 Decision"), in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of five (5) years with certain terms and conditions, including a requirement to complete PACE. A copy of the 2009 Decision is attached as Exhibit A and is incorporated by reference.

4. In a separate disciplinary action entitled "In the Matter of the Petition to Revoke Probation Against Brownell Payne, M.D.," Case No. D1-2006-174257, the Medical Board of California issued a decision, effective December 3, 2010 (the "2010 Decision"), in which Respondent's 2009 probation was extended by one year, and he was again ordered to complete PACE within six months of the effective date of the 2010 Decision. The 2010 Decision also stated that all other terms and conditions of the 2009 Decision continued to apply, and that Respondent was bound by the terms and conditions of the 2009 Decision. A copy of the 2010 Decision is attached as Exhibit B and is incorporated by reference.

5. Due to Respondent's failure to pass PACE pursuant to the 2009 and 2010 Decisions, Accusation & Petition to Revoke Probation No: D2-2006-174257 was filed before the Medical Board of California (Board), Department of Consumer Affairs. The Accusation & Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on February 10, 2011. Respondent timely filed his Notice of Defense contesting the Accusation & Petition to Revoke Probation.

6. On March 25, 2011, the parties stipulated and agreed to waive the statutory time limit requiring an expedited hearing, pursuant to Government Code Section 11529(f), to enable, *inter alia*, Respondent to study before returning to PACE for reevaluation.

## JURISDICTION

7. This First Amended Accusation & Petition to Revoke Probation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the



1 following laws. All section references are to the Business and Professions Code unless otherwise  
2 indicated.

3 8. Section 2234 of the Code states:

4 "The Division of Medical Quality<sup>1</sup> shall take action against any licensee who is charged  
5 with unprofessional conduct. In addition to other provisions of this article, unprofessional  
6 conduct includes, but is not limited to, the following:

7 "(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
8 violation of, or conspiring to violate any provision of this chapter [Chapter 5, the Medical  
9 Practice Act].<sup>2</sup>

10 "(b) Gross negligence.

11 "(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or  
12 omissions. An initial negligent act or omission followed by a separate and distinct departure from  
13 the applicable standard of care shall constitute repeated negligent acts.

14 "(1) An initial negligent diagnosis followed by an act or omission medically appropriate for  
15 that negligent diagnosis of the patient shall constitute a single negligent act.

16 "(2) When the standard of care requires a change in the diagnosis, act, or omission that  
17 constitutes the negligent act described in paragraph (1), including, but not limited to, a  
18 reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the  
19 applicable standard of care, each departure constitutes a separate and distinct breach of the  
20 standard of care.

21 "(d) Incompetence.

22 "(e) The commission of any act involving dishonesty or corruption which is substantially  
23 related to the qualifications, functions, or duties of a physician and surgeon.

24 "(f) Any action or conduct which would have warranted the denial of a certificate."

25 9. Section 2227 of the Code provides that a licensee who is found guilty under the

26  
27 <sup>1</sup> Pursuant to Business and Professions Code section 2002, "Division of Medical Quality"  
28 or "Division" shall be deemed to refer to the Medical Board of California.

1 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed  
2 one year, placed on probation and required to pay the costs of probation monitoring, or such other  
3 action taken in relation to discipline as the Division deems proper.

4 CAUSE FOR DISCIPLINE

5 (Incompetence/Failure to Pass PACE Program)

6 10. Respondent is subject to disciplinary action under section 2234, subdivision (d) of  
7 the Code, in that he has demonstrated a lack of basic medical knowledge, judgment and ability in  
8 the care and treatment of patients as shown by his failure to pass the Physician Assessment and  
9 Clinical Education Program ("PACE Program") at the University of California, San Diego. The  
10 circumstances are as follows:

11 A. Respondent enrolled in PACE and attended Phase I on September 16-17, 2010,  
12 after settlement of an Accusation concerning Respondent's care and treatment of a patient who  
13 died under his care.

14 B. During Phase I, Respondent completed the Inpatient version of PRIMUM, a  
15 computerized test developed by the National Board of Medical Examiners (NBME), designed to  
16 assess his knowledge of clinical decision-making and patient-management skills. Respondent  
17 scored in the bottom quartile on all eight cases, four of which were one standard deviation below  
18 average, and three of which were two standard deviations below average.

19 C. Respondent also failed the Ethics and Communication Examination, a multiple-  
20 choice test which assesses basic medical knowledge and knowledge of ethics and communication.  
21 He scored 58% on this exam. Of note, Respondent only answered 85 out of the 100 items on this  
22 examination. Respondent's performance on this exam was well below average.

23 D. Respondent also failed a multiple-choice test which assessed knowledge of  
24 pharmacotherapeutics with a submodule focusing on inpatient healthcare. He scored 44%.  
25 Respondent's performance on this exam was well below average.

26 E. Respondent also failed an objective 120-item multiple-choice test which assesses  
27 applied basic science principles underlying medicine. Respondent scored 44% on this exam.  
28 Respondent's performance on this exam was well below average.

1 F. During Phase I, Respondent was also given a one-hour oral clinical examination  
2 on the subject of Anesthesiology. After completing the exam, Respondent's performance was  
3 quantitatively assessed based on a 10 point score (10 = perfect score; 7.0 = minimum score  
4 required to pass). Respondent received a total of 575 points out of 1800 possible for a cumulative  
5 score of 3.2 ("Fail"). In addition, Respondent failed to score above 50% on any one of the 18  
6 categories of knowledge evaluated.

7 G. Due to Respondent's current profound knowledge deficits, PACE staff concluded  
8 that it would be unreasonable to expect that a two-week training session would be adequate to  
9 restore Respondent's expertise in anesthesiology and general medicine. Accordingly, PACE staff  
10 recommended Respondent undergo a 4-6 month extensive review of anesthesiology, preferably  
11 with associated clinical training before he can be reevaluated.

12 H. PACE evaluators also concluded that Respondent's medical knowledge gaps were  
13 so severe that they [the PACE evaluators] concluded that Respondent is currently unsafe to  
14 practice medicine and recommended that Respondent participate in full-time studying before  
15 returning for reevaluation in Phase II.

16 I. Respondent returned for Phase II of the PACE program September 6-9, 2011,  
17 November 10-11, 2011, and February 28, 2012.

18 J. Respondent's overall performance during Phase II and subsequent oral  
19 examinations was substandard. Respondent was given individualized feedback on his self-study  
20 program and granted three separate opportunities to pass the anesthesiology oral clinical  
21 examination. Based on his performance during Phase II, PACE evaluators concluded that  
22 Respondent has demonstrated consistently broad deficiencies in his knowledge of both general  
23 anesthesiology and general medicine. PACE staff also added that Respondent did not yet possess  
24 an adequate fund of knowledge to serve as a safe and prudent anesthesiologist, despite supportive  
25 efforts by the University of California - San Diego (UCSD) Anesthesiology physicians and PACE  
26 staff. In short, PACE concluded that Respondent's overall performance during PACE was  
27 consistent with a "Fail."

28 K. Respondent's lack of basic medical knowledge as shown by objective and

1 subjective factors shows that he is incompetent and subjects his license to discipline.

2 CAUSE TO REVOKE PROBATION

3 (Failure to Comply: PACE Program)

4 11. At all times after the effective date of Respondent's probation, Condition 16 of the  
5 2009 Decision states in pertinent part:

6 "Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in  
7 a clinical training or educational program equivalent to the Physician Assessment and  
8 Clinical Education ("PACE") Program offered at the University of California - San Diego  
9 School of Medicine ("Program").

10 ...  
11 ... Respondent shall comply with Program recommendations.

12 "At the completion of any additional educational or clinical training, Respondent  
13 shall submit to and pass an examination. The Program's determination whether or not  
14 Respondent passed the examination or successfully completed the Program shall be  
15 binding.

16 "Respondent shall complete the Program not later than one year after  
17 Respondent's initial enrollment unless the Board or its designee agrees in writing to a later  
18 time for completion.

19 "Failure to participate in and complete successfully all phases of the clinical  
20 training program outlined above is a violation of probation."

21 12. By reason of the facts set forth in paragraphs 10A through 10K above, Respondent  
22 has failed to comply/pass the PACE program, thus violating his probation.

23 DISCIPLINE CONSIDERATIONS

24 13. To determine the degree of discipline, if any, to be imposed on Respondent,  
25 Complainant alleges that on or about April 5, 1993 (the "1993 Decision"), in a prior disciplinary  
26 action entitled *In the Matter of the Accusation Against Brownell H. Payne, M.D.*, before the  
27 Medical Board of California, in Case No. D-3678 (11-1990-1567), Respondent's license was  
28 placed on five (5) years probation with terms and conditions after he was convicted of grand theft

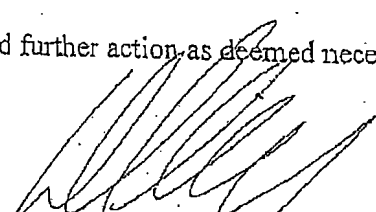
1 for submitting false/fraudulent Medi-Cal claims for supervising the rendering of anesthesia  
2 services at two medical clinics. The 1993 Decision is now final and is incorporated by reference  
3 as if fully set forth.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
6 and that following the hearing, the Board issue a decision:

- 7 1. Revoking the probation that was granted by the Board in Case 06-2006-  
8 174257 and imposing the disciplinary order that was stayed, thereby revoking Physician's and  
9 Surgeon's Certificate No. A 26350 issued to Respondent;
- 10 2. For the grounds stated, revoking or suspending his Physician's and  
11 Surgeon's Certificate;
- 12 3. Revoking or suspending his authority to supervise physician assistants  
13 pursuant to section 3527 of the Code;
- 14 4. Ordering him to pay the Medical Board of California the costs of  
15 probation monitoring, if placed on probation; and
- 16 5. Taking such other and further action as deemed necessary and proper.

17  
18 DATED: June 15, 2012

  
LINDA K. WHITNEY  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California

Complainant

23  
24 LA2010502699

Exhibit A

2009 DECISION

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

BROWNELL H. PAYNE, M.D.

File No. 06-2006-174257

Physician's and Surgeon's  
Certificate No. A-26350

Respondent

DECISION

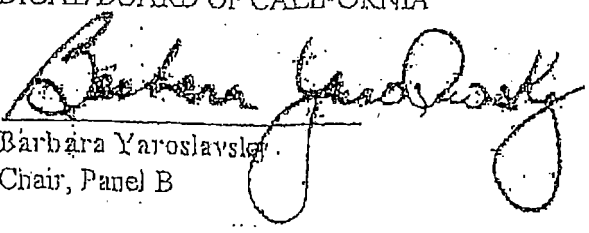
The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on May 15, 2009.

IT IS SO ORDERED April 15, 2009.

MEDICAL BOARD OF CALIFORNIA

By:

  
Barbara Yaroslavlsky  
Chair, Panel B

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 JOSE R. GUERRERO  
Supervising Deputy Attorney General  
3 DAVID CARR, State Bar No. 131672  
Deputy Attorney General  
4 California Department of Justice  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, California 94102-7004  
Telephone: (415) 703-5538  
6 Facsimile: (415) 703-5480  
7 Attorneys for Complainant  
8

9  
10 BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 BROWNELL H. PAYNE, M.D.  
5118 Showboat Lane  
14 Culver City, California 90230

15 Physician's and Surgeon's Certificate Number A 26350

16 Respondent.  
17

Case No. 06-2006-174257  
OAH No. 2008061062

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to  
19 the above-entitled proceedings that the following matters are true:

20 1. Complainant Barbara Johnston ("complainant") is the Executive Director  
21 of the Medical Board of California ("Board" or "Medical Board"). She brought this action solely  
22 in her official capacity and is represented in this matter by Edmund G. Brown Jr., Attorney  
23 General of the State of California, by David Carr, Deputy Attorney General.

24 2. Respondent Brownell H. Payne, M.D. ("Respondent" or "Dr. Payne") is  
25 represented in this proceeding by George L. Mallory, Jr., Esq. of George L. Mallory, Jr. &  
26 Associates, 1925 Century Park East, Suite 2000, Los Angeles, California 90067.

27 3. On October 25, 1974, the Board issued Physician's and Surgeon's  
28 ///



1 Certificate No. A 26350 to Brownell H. Payne, M.D. This certificate expires on August 31,  
2 2010.

3 4. An Accusation in case No. 06-2006-174257 was filed on January 23, 2008  
4 before the Medical Board of California, Department of Consumer Affairs. A copy of the  
5 Accusation is attached as Exhibit A and incorporated by reference in this stipulation.

6 5. Respondent has carefully read and understands the nature of the  
7 allegations in the Accusation and the effects of this Stipulated Settlement and Disciplinary Order.

8 6. Respondent is fully aware of his legal rights in this matter, including the  
9 right to a hearing on the charges and allegations in the Accusation, the right to be represented by  
10 counsel at his own expense, the right to confront and cross-examine the witnesses against him,  
11 the right to present evidence and to testify on his own behalf, the right to the issuance of  
12 subpoenas to compel the attendance of witnesses and the production of documents, the right to  
13 reconsideration and court review of an adverse decision, and all other rights accorded by the  
14 California Administrative Procedure Act and other applicable laws.

15 7. For purposes of this stipulation, Respondent voluntarily, knowingly, and  
16 intelligently waives and gives up each and every right set forth above.

17 8. Respondent understands that the charges and allegations in the Accusation,  
18 if proven at a hearing, constitute cause for imposing discipline upon his Physician's and  
19 Surgeon's Certificate.

20 9. Respondent does not contest that, at an administrative hearing,  
21 complainant could establish a *prima facie* case with respect to the charges and allegations  
22 contained in Accusation No. 06-2006-174257 and that he has therefore subjected his license to  
23 disciplinary action.

24 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject  
25 to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the  
26 Order below.

27 11. The admissions made by Respondent herein are only for the purposes of  
28 this proceeding, or any other proceedings in which the Medical Board of California, or other

1 professional licensing agency is involved, and shall not be admissible in any other criminal or  
2 civil proceeding.

3           12     This stipulation shall be subject to the approval of the Board. Respondent  
4 understands and agrees that Medical Board's staff and counsel for complainant may  
5 communicate directly with the Board regarding this stipulation and settlement, without notice to  
6 or participation by Respondent or his counsel. If the Board fails to adopt this stipulation as its  
7 Order, the Stipulated Settlement and Disciplinary Order, except for this paragraph, shall be of no  
8 force or effect. The Stipulated Settlement and Disciplinary Order shall be inadmissible in any  
9 legal action between the parties and the Board shall not be disqualified from further action by  
10 having considered this matter.

11           13.     The parties agree that facsimile copies of this Stipulated Settlement and  
12 Disciplinary Order, including facsimile signatures on it, shall have the same force and effect as  
13 the original Stipulated Settlement and Disciplinary Order and signatures and that electronic  
14 signatures shall be as effective and binding as handwritten ones.

15           14.     In consideration of the foregoing admissions and stipulations, the parties  
16 agree that the Board shall, without further notice or formal proceeding, issue and enter the  
17 following Disciplinary Order:

18                               DISCIPLINARY ORDER

19           IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate Number  
20 A 26350 issued to Respondent Brownell H. Payne, M.D. is revoked. However, the revocation is  
21 stayed and Respondent is placed on probation for five years with the following terms and  
22 conditions of probation.

23           15.     NOTIFICATION Respondent shall provide a true copy of the Decision  
24 and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where  
25 privileges or membership are extended to him, at any other facility where he engages in the  
26 practice of medicine including all physician and locum tenens registries or other similar agencies,  
27 and to the Chief Executive Officer at every insurance carrier which extends malpractice  
28 insurance coverage to him. Respondent shall submit proof of compliance to the Board or its

1 designee within 15 calendar days of the effective date of this order. This condition shall apply to  
2 any change(s) in hospitals, other facilities, or insurance carrier.

3 16. CLINICAL TRAINING PROGRAM Within 60 calendar days of the  
4 effective date of this Decision, Respondent shall enroll in a clinical training or educational  
5 program equivalent to the Physician Assessment and Clinical Education ("PACE") Program  
6 offered at the University of California-San Diego School of Medicine ("Program").

7 The Program shall consist of a Comprehensive Assessment program comprised of  
8 a two-day assessment of Respondent's physical and mental health; basic clinical and  
9 communication skills common to all clinicians; and medical knowledge, skill, and judgment  
10 pertaining to Respondent's specialty or sub-specialty, and at a minimum, a 40 hour program of  
11 clinical education in the area of practice in which Respondent was alleged to be deficient and  
12 which takes into account data obtained from the assessment, Decision, Accusation, and any other  
13 information that the Board or its designee deems relevant. Respondent shall pay all expenses  
14 associated with the clinical training program.

15 Based on Respondent's performance and test results in the assessment and clinical  
16 education, the Program will advise the Board or its designee of its recommendation(s) for the  
17 scope and length of any additional educational or clinical training, treatment for any medical  
18 condition, treatment for any psychological condition, or anything else affecting Respondent's  
19 practice of medicine. Respondent shall comply with Program recommendations.

20 At the completion of any additional educational or clinical training, Respondent  
21 shall submit to and pass an examination. The Program's determination whether or not  
22 Respondent passed the examination or successfully completed the Program shall be binding.

23 Respondent shall complete the Program not later than one year after Respondent's  
24 initial enrollment unless the Board or its designee agrees in writing to a later time for completion.

25 Failure to participate in and complete successfully all phases of the clinical  
26 training program outlined above is a violation of probation.

27 17. EDUCATION COURSE Within 60 days of the effective date of this  
28 order, Respondent shall submit to the Board or its designee for its prior approval educational

1 program(s) or course(s) which shall include Prescribing Practices, Ethics, and Medical Record  
2 Keeping. The educational program(s) or course(s) shall be at Respondent's expense and shall be  
3 in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.  
4 Following the completion of each course, the Board or its designee may administer an  
5 examination to test Respondent's knowledge of the course.

6 18. SUSPENSION OF PRACTICE As a condition of probation,  
7 Respondent is suspended from practice for a period of 60 days. This period of suspension will  
8 commence 60 days from the effective date of this order, unless Respondent requests an earlier  
9 commencement date.

10 19. PRACTICE MONITOR Within 30 days of the effective date of this  
11 Order, Respondent shall submit to the Board or its designee for prior approval as a practice  
12 monitor the name and qualifications of one or more licensed physicians and surgeons whose  
13 licenses are in good standing and who are preferably American Board of Medical Specialties  
14 (ABMS) certified. A monitor shall have no prior or current business or personal relationship  
15 with respondent or other relationship that reasonably could be expected to compromise the ability  
16 of the monitor to render fair and unbiased reports to the Board, including but not limited to any  
17 form of bartering. The nominee(s) for practice monitor shall be in Respondent's field of practice  
18 and must agree to serve as practice monitor. Respondent shall pay all monitoring costs.

19 The Board or its designee shall provide the approved monitor with copies of the  
20 Decision and Second Amended Accusation, and a proposed monitoring plan. Within 15 calendar  
21 days of receipt of the Decision, Second Amended Accusation, and proposed monitoring plan, the  
22 monitor shall submit a signed statement that the monitor has read the Decision and Second  
23 Amended Accusation, fully understands the role of a monitor, and agrees or disagrees with the  
24 proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the  
25 monitor shall submit a revised monitoring plan with the signed statement.

26 Commencing within 60 calendar days of the effective date of this Decision, and  
27 continuing throughout probation, respondent's practice shall be monitored by the approved  
28 monitor. Respondent shall make all records available for immediate inspection and copying on

1 the premises by the monitor at all times during business hours, and shall retain the records for the  
2 entire term of probation.

3 The monitor shall submit a quarterly written report to the Board or its designee  
4 which includes an evaluation of respondent's performance, indicating whether respondent's  
5 practices are within the standards of practice of medicine or billing, or both, and whether  
6 respondent is practicing medicine safely, billing appropriately or both.

7 It shall be the sole responsibility of respondent to ensure that the monitor submits  
8 the quarterly written reports to the Board or its designee within 10 calendar days after the end of  
9 the preceding quarter.

10 If the monitor resigns or is no longer available, respondent shall, within 5 days of  
11 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
12 name and qualifications of a replacement monitor who will be assuming that responsibility  
13 within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within  
14 60 days of the resignation or unavailability of the monitor, respondent shall be suspended from  
15 the practice of medicine until a replacement monitor is approved and prepared to assume  
16 immediate monitoring responsibility. Respondent shall cease the practice of medicine within 3  
17 days after being so notified by the Board or designee.

18 20. PSYCHIATRIC EVALUATION Within 60 days of the effective date  
19 of this Order Respondent shall undergo and complete a psychiatric evaluation (and psychological  
20 testing, if deemed necessary by the evaluator) by a Board-appointed board-certified psychiatrist,  
21 who shall consider any information provided by the Board and any other information the  
22 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its  
23 designee. Psychiatric evaluations conducted prior to the effective date of this Order will not  
24 fulfill this requirement. Respondent shall bear the costs of the psychiatric evaluation and any  
25 psychological testing.

26 Respondent shall comply with all restrictions or conditions recommended by the  
27 evaluating psychiatrist within 15 days after being notified by the Board or its designee. Failure to  
28 undergo and complete a psychiatric evaluation--and psychological testing, if necessary--or

1 comply with the any additional conditions or restrictions as recommended by the evaluating  
2 psychiatrist is a violation of probation.

3 21. OBEY ALL LAWS Respondent shall obey all federal, state and local  
4 laws, and all rules governing the practice of medicine in California and remain in full compliance  
5 with any court ordered criminal probation, payments, and other orders.

6 22. QUARTERLY DECLARATIONS Respondent shall submit quarterly  
7 declarations under penalty of perjury on forms provided by the Board, stating whether there has  
8 been compliance with all the conditions of probation. Respondent shall submit quarterly  
9 declarations not later than 10 calendar days after the end of the preceding quarter.

10 23. PROBATION UNIT COMPLIANCE Respondent shall comply with  
11 all requirements and requests of the Board's probation unit. Respondent shall, at all times, keep  
12 the Board informed of his business and residence addresses. Changes of such addresses shall be  
13 immediately communicated in writing to the Board or its designee. Under no  
14 circumstances shall a post office box serve as an address of record, except as allowed by  
15 Business and Professions Code section 2021(b).

16 Respondent shall not engage in the practice of medicine in his place of residence.  
17 Respondent shall maintain a current and renewed California physician's and surgeon's license.

18 Respondent shall immediately inform the Board or its designee, in writing, of  
19 travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last,  
20 more than thirty (30) calendar days.

21 24. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent  
22 shall be available upon request, with or without prior notice, at various intervals throughout the  
23 term of probation for in-person interviews with the Board or its designee, either at Respondent's  
24 place of business or at the probation unit office.

25 25. RESIDING OR PRACTICING OUT-OF-STATE In the event  
26 Respondent should leave the State of California to reside or to practice, he shall notify the Board  
27 or its designee in writing 30 calendar days prior to the dates of departure and return. Non-  
28 practice is defined as any period of time exceeding thirty calendar days in which Respondent is

1 not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions  
2 Code.

3 All time spent in an intensive training program outside the State of California  
4 which has been approved by the Board or its designee shall be considered as time spent in the  
5 practice of medicine within the State. A Board-ordered suspension of practice shall not be  
6 considered as a period of non-practice. Periods of temporary or permanent residence or practice  
7 outside California will not apply to the reduction of the probationary term. Periods of temporary  
8 or permanent residence or practice outside California will relieve Respondent of the  
9 responsibility to comply with the probationary terms and conditions with the exception of this  
10 condition and the following terms and conditions of probation: Obey All Laws; Probation Unit  
11 Compliance; and Cost Recovery.

12 Respondent's license shall be automatically cancelled if his periods of temporary  
13 or permanent residence or practice outside California totals two years. However, Respondent's  
14 license shall not be canceled as long as he is residing and practicing medicine in another state of  
15 the United States and is on active probation with the medical licensing authority of that state, in  
16 which case the two year period shall begin on the date probation is completed or terminated in  
17 that state.

#### 18 26. FAILURE TO PRACTICE MEDICINE--CALIFORNIA RESIDENT

19 In the event Respondent resides in the State of California and for any reason Respondent stops  
20 practicing medicine in California, he shall notify the Board or its designee in writing 30 days  
21 prior to the dates of non-practice and return to practice. Any period of non-practice within  
22 California, as defined in this condition, will not apply to the reduction of the probationary term  
23 and does not relieve Respondent of the responsibility to comply with the terms and conditions of  
24 probation. Non-practice is defined as any period of time exceeding thirty calendar days in which  
25 Respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business  
26 and Professions Code.

27 All time spent in an intensive training program which has been approved by the  
28 Board or its designee shall be considered time spent in the practice of medicine. For purposes of

1 this condition, non-practice due to a Board-ordered suspension or in compliance with any other  
2 condition of probation, shall not be considered a period of non-practice.

3 Respondent's license shall be automatically canceled if he resides in California  
4 and fails to engage in any of the activities described in sections 2051 and 2052 of the Business  
5 and Professions Code for a total of two years.

6 27. COMPLETION OF PROBATION Respondent shall comply with all  
7 financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to  
8 the completion of probation. Upon successful completion of probation, Respondent's certificate  
9 shall be fully restored.

10 28. VIOLATION OF PROBATION Failure to fully comply with any term  
11 or condition of probation is a violation of probation. If Respondent violates probation in any  
12 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke  
13 probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to  
14 Revoke Probation or an Interim Suspension Order is filed against Respondent during probation,  
15 the Board shall have continuing jurisdiction until the matter is final, and the period of probation  
16 shall be extended until the matter is final.

17 29. LICENSE SURRENDER Following the effective date of this decision,  
18 if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to  
19 satisfy the terms and conditions of probation, he may request to voluntarily surrender his  
20 certificate to the Board. The Board reserves the right to evaluate Respondent's request and to  
21 exercise its discretion in deciding whether to grant the request, deny it, or take any other action  
22 deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the  
23 surrender, Respondent shall within 15 calendar days deliver his wallet and wall certificates to the  
24 Board or its designee and shall no longer practice medicine. Respondent will no longer be  
25 subject to the terms and conditions of probation and the surrender of his certificate shall be  
26 deemed disciplinary action. If Respondent re-applies for a medical license, the application shall  
27 be treated as a petition for reinstatement of a revoked certificate.

28 30. PROBATION MONITORING COSTS Each and every year of

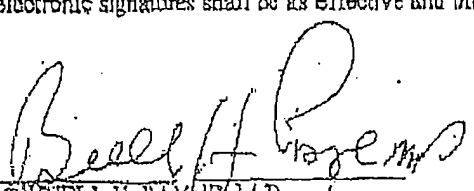


1 probation. Respondent shall pay the costs associated with probation monitoring, as designated by  
 2 the Board. Those costs are presently \$3,175.00 but may be adjusted on an annual basis. Such  
 3 costs shall be payable to the Medical Board of California and delivered to the Board or its  
 4 designee no later than January 31 of each calendar year. Failure to pay costs within 30 days of  
 5 the due date is a violation of probation.

#### 6 ACCEPTANCE

7 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
 8 have fully discussed the terms and conditions and other matters contained therein with my  
 9 attorney George L. Mallory, Jr. and I understand the effect this stipulation will have on my  
 10 Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement voluntarily,  
 11 knowingly and intelligently and agree to be bound by the Disciplinary Order and Decision of the  
 12 Medical Board of California. I further agree that a facsimile copy of this Stipulated Settlement  
 13 and Disciplinary Order, including facsimile copies of signatures, may be used with the same  
 14 force and effect as the originals and that electronic signatures shall be as effective and binding as  
 15 handwritten ones.

16 DATED: 2 Nov 2009

17   
 18 BROWNELL H. PAYNE, M.D.  
 Respondent

19  
 20 I have read and fully discussed with my client Brownell H. Payne, M.D. the terms  
 21 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
 22 Order. I approve its form and content.

23 DATED: January 2, 2009

24   
 25 GEORGE L. MALLORY, Jr., Esq.  
 Attorney for Respondent

26 III

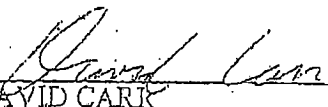
#### 27 ENFORCEMENT

28 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully

1 submitted for consideration by the Medical Board of California of the Department of Consumer  
2 Affairs.

3 DATED: February 24, 2004

4 EDMUND G. BROWN JR., Attorney General  
5 of the State of California

6   
7 DAVID CARR  
8 Deputy Attorney General

9 Attorneys for Complainant

Exhibit A:

Accusation Case No. 06-2006-174257

AG 0024

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Jun. 23, 2008  
BY Brenda Allen ANALYST

1 EDMUND G. BROWN JR, Attorney General  
of the State of California  
2 JOSE R. GUERRERO, State Bar No. 97276  
Supervising Deputy Attorney General  
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7  
8 Attorneys for Complainant

9 BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
10 DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 06-2006-174257

13 BROWNELL H. PAYNE, M.D.  
5118 Showboat Lane  
14 Culver City, CA 90230

OAH No.

ACCUSATION

15 Physician and Surgeon's Certificate No. A 26350

16  
17 Respondent

18 Complainant alleges:

19 PARTIES

20 1. Barbara Johnston (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Director of the Medical Board of California, Department of  
22 Consumer Affairs.

23 2. On or about October 25, 1974, the Medical Board of California issued  
24 Physician and Surgeon's Certificate Number A 26350 to Brownell H. Payne, M.D. (Respondent).  
25 The Physician and Surgeon's Certificate was in full force and effect at all times relevant to the  
26 charges brought herein and will expire on August 31, 2008, unless renewed. Respondent's  
27

Respondent was disciplined by Board order effective April 5, 1993 for conviction of a crime

1 substantially related to the functions and duties of a physician. Respondent's license was revoked  
2 but the revocation stayed for a probationary period of five years, with an actual suspension of  
3 practice for 30 days.

#### 4 JURISDICTION

5 3. This Accusation is brought before the the Medical Board of California,  
6 Department of Consumer Affairs, under the authority of the following laws. All section  
7 references are to the Business and Professions Code unless otherwise indicated.

8 4. Section 2227 of the Code states:

9 "(a) A licensee whose matter has been heard by an administrative law judge of  
10 the Medical Quality Hearing Panel as designated in Section 11371 of the Government  
11 Code, or whose default has been entered, and who is found guilty, or who has entered into  
12 a stipulation for disciplinary action with the division, may, in accordance with the  
13 provisions of this chapter:

14 (1) Have his or her license revoked upon order of the division.

15 (2) Have his or her right to practice suspended for a period not to exceed  
16 one year upon order of the division.

17 (3) Be placed on probation and be required to pay the costs of probation  
18 monitoring upon order of the division.

19 (4) Be publicly reprimanded by the division.

20 (5) Have any other action taken in relation to discipline as part of an order  
21 of probation, as the division or an administrative law judge may deem proper.

22 (b) Any matter heard pursuant to subdivision (a), except for warning  
23 letters, medical review or advisory conferences, professional competency  
24 examinations, continuing education activities, and cost reimbursement associated  
25 therewith that are agreed to with the division and successfully completed by the  
26 licensee, or other matters made confidential or privileged by existing law, is  
27 deemed public, and shall be made available to the public by the board pursuant to

1           5.       Section 2234 of the Code states, in relevant part:

2           "The Medical Board of California shall take action against any licensee  
3 who is charged with unprofessional conduct. In addition to other provisions of this  
4 article, unprofessional conduct includes, but is not limited to, the following:

5           (a) Violating or attempting to violate, directly or indirectly, assisting in or  
6 abetting the violation of, or conspiring to violate any provision of this chapter  
7 [Chapter 5, the Medical Practice Act].

8           (b) Gross negligence.

9           (c) Repeated negligent acts. To be repeated, there must be two or more  
10 negligent acts or omissions. An initial negligent act or omission followed by a  
11 separate and distinct departure from the applicable standard of care shall constitute  
12 repeated negligent acts.

13           (1) An initial negligent diagnosis followed by an act or omission  
14 medically appropriate for that negligent diagnosis of the patient shall  
15 constitute a single negligent act.

16           (2) When the standard of care requires a change in the diagnosis,  
17 act, or omission that constitutes the negligent act described in paragraph  
18 (1), including, but not limited to, a reevaluation of the diagnosis or a  
19 change in treatment, and the licensee's conduct departs from the applicable  
20 standard of care, each departure constitutes a separate and distinct breach of  
21 the standard of care.

22           (d) Incompetence.

23           (e) The commission of any act involving dishonesty or corruption which is  
24 substantially related to the qualifications, functions, or duties of a physician and  
25 surgeon."

26           6.       Section 2266 states: "The failure of a physician and surgeon to  
27 maintain adequate and accurate records relating to the provision of services to their

## GLOSSARY OF REFERENCED DRUGS

7. Versed, a trade name for midazolam hydrochloride, is a short-acting benzodiazepine central nervous system depressant. Versed is indicated for preoperative sedation/anxiolysis/amnesia; for sedation/anxiolysis/amnesia prior to or during diagnostic, therapeutic, or endoscopic procedures; for induction of general anesthesia, before administration of other anesthetic agents; and for sedation of intubated and mechanically ventilated patients. Versed has produced serious adverse cardiorespiratory events including respiratory depression, airway obstruction, oxygen desaturation, apnea, respiratory arrest, and/or cardiac arrest. Intravenous Versed should be used only in hospital or ambulatory care settings that provide for continuous monitoring of respiratory and cardiac function.

8. Ancef, the trade name for cefazolin sodium, is an injectable cephalosporin bactericidal acting against a range of commonly encountered gram-positive and gram-negative aerobes. Ancef is commonly administered prophylactically pre- or peri-operatively to reduce the incidence and severity of post-operative infection. Care should be taken in administering Ancef to patients with impaired renal function.

9. Diprivan, the trade name for the generic propofol, is a short-acting general anesthetic administered only in a critical-care setting by persons trained in anesthesia, airway management, and advanced life support. Propofol acts within 1-3 minutes of intravenous administration to produce clinical hypnosis. Propofol may depress cardiac output in some patients with concomitant diminution of ventilation. Cardiopulmonary depression may require increasing the flow of TV fluids and administering pressor and/or anticholinergic agents.

10. Zemuron, the brand name for generic rocuronium bromide, is a non-polarizing neuromuscular blocking agent employed as an adjunct to general anesthesia to facilitate rapid sequence and routine endotracheal intubation and to provide muscle relaxation during surgery and mechanical ventilation. The neuromuscular blocking action

1 reaching the desired level of neuromuscular block, the infusion of Zemuron must be  
2 individualized for each patient. The rate of administration should be adjusted according to  
3 the patient's twitch response as monitored by the use of a peripheral nerve stimulator.  
4 Zemuron is only to be administered by experienced clinicians in facilities where  
5 intubation, artificial respiration, oxygen therapy, and an antagonist are immediately  
6 available.

7  
8 FIRST CAUSE FOR DISCIPLINE

9 (Gross Negligence)

10 11. Respondent is subject to disciplinary action under section 2234(b)  
11 in that his care and treatment of patient KN departed from the standard of care and  
12 constitutes gross negligence. The circumstances are as follows:

13 12. Patient KN presented herself at the Garden Grove Surgery Center  
14 on the morning of October 22, 2003 for a scheduled outpatient septoplasty and turbinate  
15 reduction surgery with otolaryngologist Anthony Dinh, M.D. Dr. Dinh had performed a  
16 related nasal surgery on KN in June of 2003. Respondent was the anesthesiologist  
17 attending KN during this October 22 procedure. Respondent spoke with KN, either  
18 directly or with the assistance of Vietnamese-speaking staff members at the Surgery  
19 Center, the morning of the surgery. Respondent informed KN about the expected course  
20 of anesthesia and obtained her written consent to the anesthesia and to his role in the  
21 surgery. Respondent also evaluated KN's physical characteristics and general medical  
22 condition and determined she was a good candidate for general anesthesia via endotracheal  
23 intubation.

24 13. Respondent administered the sedative hypnotic Versed and the  
25 antibiotic Ancef to KN intravenously about 8:40 a.m. Actual induction of anesthesia  
26 began about five minutes later with the intravenous administration of the general  
27 anesthetic Diprivan and the paralytic agent Zemuron. The medical record contains no



1 monitor the patient's recovery from the Zemuron. While the medical record of this  
2 procedure also fails to document the means of ventilating KN after the Zemuron had  
3 suspended her breathing mechanism. Respondent later stated he was adequately manually  
4 ventilating KN by bag and mask at this point in the surgery, using 100% oxygen.  
5 Respondent proceeded to attempt direct laryngoscopy and oro-tracheal intubation. From  
6 approximately 8:50 a.m. until about 9:00 a.m. Respondent made between 9 and 11  
7 attempts to intubate KN with a variety of blades and other assistive devices. Respondent's  
8 anesthesia note made the morning of the procedure states "upon laryngoscopic evaluation  
9 epiglottis clearly visualized" but "unable to visualize vocal cords." During this time KN's  
10 oxygen saturation was recorded as an acceptable 95% and above. At Respondent's  
11 request, Dr. Dinh applied cricoid pressure to KN, but Respondent was still unable to  
12 adequately see KN's vocal cords or effect intubation of a patent airway.

13 14. At approximately 9:00 a.m. Dr. Dinh unsuccessfully attempted a  
14 fiberoptic endoscopy and intubation. At this same time Respondent stopped IV  
15 administration of the anesthetic Diprivan. In deposition testimony Respondent stated he  
16 elected not to attempt pharmacologic reversal of the earlier-administered paralytic  
17 Zemuron, but made contrary statements to agents of the Medical Board in 2007 that he had  
18 given such reversal agents to KN. Respondent also testified in his deposition that he  
19 considered using a laryngeal mask airway after the unsuccessful fiberoptic endoscopy but  
20 rejected that option because of the intralaryngeal swelling. In the subsequent interview  
21 with investigators of the Medical Board in 2007 Respondent insisted that he had attempted  
22 ventilation of KN by means of a laryngeal mask airway, but it was unavailing. Neither of  
23 Respondent's later claims—that he attempted placement of a laryngeal mask airway and  
24 that he initiated pharmacologic reversal of the muscle relaxant Zemuron—are reflected by  
25 any entries in Respondent's chart notes of the event or any other documentation in the  
26 medical record of KN's surgery at Garden Grove Medical Center.

27 15. Between 9:10 a.m. and 9:15 a.m. patient KN's oxygen saturation

1 emergency airway through the cricothyroid membrane, but KN's heart rate and oxygen  
2 saturation levels continued to decline. Dr. Dinh then performed an emergency  
3 tracheotomy, but KN's heart rate dropped below 50 beats per minute and she very soon  
4 developed ventricular fibrillation. Respondent and Dr. Dinh initiated emergency  
5 procedures, including electro-defibrillation, and placed a 911 call for paramedic assistance.  
6 The paramedics transported KN to Garden Grove Medical Center where she was  
7 "pulseless & apneic, full arrest on arrival...." at the emergency room. All attempts to  
8 restore KN's breathing and heart beat at the hospital failed. KN was pronounced dead at  
9 10:44 a.m.

10 16. Respondent's care and treatment of KN was an extreme departure  
11 from the standard of care, in that Respondent made between 9 and 11 futile attempts to  
12 intubate her, rather than effecting an airway under the initial serious, but not yet  
13 emergency, circumstances using a laryngeal mask airway. This was an extreme departure  
14 from the standard of care of physicians in California and constitutes gross negligence so as  
15 to subject Respondent's license to discipline for violation of section 2234(b).

#### 17 SECOND CAUSE FOR DISCIPLINE

18 (Gross Negligence/Incompetence)

19 17. Paragraphs 12 through 15 of the First Cause for Discipline, above,  
20 are incorporated herein by reference, as if full set out.

21 18. Respondent's failure to initiate pharmacological reversal of the  
22 paralytic agent Zernuron while attempting to reawaken KN constitutes gross negligence  
23 and/or incompetence so as to subject his license to disciplinary action for violation of  
24 section 2234(b) and/or 2234(d).

#### 25 THIRD CAUSE FOR DISCIPLINE

26 (Dishonest Acts)  
27

1 are incorporated herein by reference, as if fully set out.

2           20. Respondent's statements under oath at his November 4, 2005  
3 deposition—that he did not attempt to initiate an airway by placing a laryngeal mask airway  
4 during KN's surgery and that he did not initiate pharmacologic reversal of the muscle  
5 relaxant after his repeated failures to intubate KN—are wholly contradicted by his explicit  
6 and repeated statements made at his physician interview with Medical Board investigators  
7 on April 24, 2007 that he did attempt placement of a laryngeal mask airway and that he did  
8 administer drugs to reverse the effect of the muscle relaxant. This dishonesty is  
9 substantially related to Respondent's qualifications and duties as a physician and therefore  
10 subjects Respondent's license to discipline for violation of section 2234(e).

#### 11 12 FOURTH CAUSE FOR DISCIPLINE

13 (Failure to Maintain Accurate Patient Records)

14           21. Paragraphs 12 through 15 of the First Cause for Discipline, above,  
15 are herein incorporated by reference, as if fully set out.

16           22. Respondent's failure to maintain an adequate and accurate medical  
17 record of his care and treatment of KN, which would necessarily include his claimed use  
18 of a laryngeal mask airway and his claimed attempt to pharmacologically reverse the  
19 paralytic agent, is unprofessional conduct by invocation of section 2266 and subjects  
20 Respondent's license to discipline.

#### 21 PRAAYER

22           WHEREFORE, Complainant requests that a hearing be held on the matters  
23 herein alleged, and that following the hearing, the Medical Board issue a decision:

- 24           1. Revoking or suspending Physician and Surgeon's Certificate  
25 Number A 26350, issued to Brownell H. Payne, M.D.;  
26           2. Revoking, suspending, or denying approval of Brownell H. Payne,  
27 M.D., the authority, pursuant to section 3527 of the Code, to supervise physician

- 1                   3.     Ordering Brownell H. Payne, M.D., if placed on probation, to pay  
2 the Medical Board of California the costs of probation monitoring; and  
3                   4.     Taking such other action as deemed necessary and proper.  
4

5 DATED: January 23, 2008  
6


7   
8 BARBARA JOHNSTON  
9 Executive Director  
10 Medical Board of California  
11 Department of Consumer Affairs  
12 State of California  
13 Complainant  
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EXHIBIT B

2010 DECISION

AG 0024



1 EDMUND G. BROWN JR.  
Attorney General of California  
2 TRINA L. SAUNDERS  
Acting Supervising Deputy Attorney General  
3 TAN N. TRAN  
Deputy Attorney General  
4 State Bar No. 197775  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-6793  
6 Facsimile: (213) 897-9395  
*Attorneys for Complainant*

7  
8 BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
9 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke  
11 Probation Against:

Case No. D1-2006-174257

12 BROWNELL PAYNE, M.D.  
5118 Showboat Lane  
13 Culver City, CA 90230  
Physician's and Surgeon's Certificate No. A  
14 26350

STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER

15 Respondent.  
16

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:  
19

20 1. Linda K. Whitney (Complainant) is the Executive Director of the Medical Board of  
21 California. She brought this action solely in her official capacity and is represented in this matter  
22 by Edmund G. Brown Jr., Attorney General of the State of California, by Tan N. Tran, Deputy  
23 Attorney General.

24 2. Respondent Brownell Payne, M.D. (Respondent) is represented in this proceeding by  
25 attorney George L. Mallory, Jr., whose address is: George L. Mallory, Jr., 1925 Century Park  
26 East, Suite 2000, Los Angeles, CA 90067-2701.

27 3. On or about October 25, 1974, the Medical Board of California issued Physician's and  
28 Surgeon's Certificate No. A 26350 to Brownell Payne, M.D. (Respondent). The Physician's and

1 Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in  
2 Petition to Revoke Probation No. D1-2006-174257 and will expire on August 31, 2012, unless  
3 renewed.

4 JURISDICTION

5 4. Petition to Revoke Probation No. D1-2006-174257 was filed before the Medical  
6 Board of California (Board), Department of Consumer Affairs, and is currently pending against  
7 Respondent. The Petition to Revoke Probation and all other statutorily required documents were  
8 properly served on Respondent on August 12, 2010. Respondent timely filed his Notice of  
9 Defense contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation No.  
10 D1-2006-174257 is attached as Exhibit A and incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and understands the  
13 charges and allegations in Petition to Revoke Probation No. D1-2006-174257. Respondent has  
14 also carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
15 Settlement and Disciplinary Order.

16 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
17 hearing on the charges and allegations in the Petition to Revoke Probation; the right to be  
18 represented by counsel at his own expense; the right to confront and cross-examine the witnesses  
19 against him; the right to present evidence and to testify on his own behalf; the right to the  
20 issuance of subpoenas to compel the attendance of witnesses and the production of documents;  
21 the right to reconsideration and court review of an adverse decision; and all other rights accorded  
22 by the California Administrative Procedure Act and other applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
24 every right set forth above.

25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in Petition to  
27 Revoke Probation No. D1-2006-174257.  
28



9. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

#### RESERVATION

10. The admissions made by Respondent herein are only for the purpose of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

#### CONTINGENCY

~~11. This stipulation shall be subject to approval by the Medical Board of California.~~

Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall have no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

#### DISCIPLINARY ORDER

13. It should be noted that in a prior disciplinary action entitled "*In the Matter of Accusation Against Brownell H. Payne, M.D.*," Case No. 06-2006-174257, the Medical Board of California issued a decision, effective May 15, 2009 (the "2009 Decision"), in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's was placed on probation for a period of five (5) years with certain terms

1 and conditions. A copy of the 2009 Decision is attached as Exhibit B and is incorporated herein  
2 by reference.

3 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
4 the Board may, without further notice or formal proceeding, issue and enter the following  
5 Disciplinary Order:

6 15. IT IS HEREBY ORDERED that Respondent's length of probation stated in the 2009  
7 Decision has been increased from five (5) years to six (6) years.

8 16. Respondent shall complete the PACE Program (Condition 16 of the 2009 Decision)  
9 within six (6) months of the effective date of this Stipulated Settlement and Disciplinary Order,  
10 unless the Board or its designee agrees in writing to a later time for completion.

11 17. All other terms and conditions of the 2009 Decision continue to apply and will  
12 continue to apply until the termination of the entire six (6) year probationary period. Respondent  
13 is hereby bound by those other terms and conditions of the 2009 Decision.  
14  
15  
16  
17

18 ACCEPTANCE

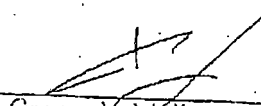
19 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
20 discussed it with my attorney, George L. Mallory, Jr.. I understand the stipulation and the effect  
21 it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement  
22 and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
23 Decision and Order of the Medical Board of California.

24  
25 DATED: 30 Sept / 2010

Bruce Payne M.D.  
BROWNELL PAYNE, M.D.  
Respondent

1 I have read and fully discussed with Respondent Brownell Payne, M.D. the terms and  
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
3 I approve its form and content.

4 DATED: 9/28/2010

  
George L. Mallory, Jr.  
Attorney for Respondent.

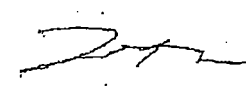
7 ENDORSEMENT

8 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
9 submitted for consideration by the Medical Board of California of the Department of Consumer  
10 Affairs.

11 Dated: 10/5/10

Respectfully Submitted;

13 EDMUND G. BROWN JR.  
14 Attorney General of California  
15 TRINA L. SAUNDERS  
16 Acting Supervising Deputy Attorney  
17 General

  
18 TAN N. TRAN  
19 Deputy Attorney General  
20 Attorneys for Complainant

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1 EDMUND C. BROWN JR.  
Attorney General of California  
2 ROBERT MCKIM BELI  
Supervising Deputy Attorney General  
3 TAN N. TRAN  
Deputy Attorney General  
4 State Bar No. 197775  
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5 Los Angeles, CA 90013  
Telephone: (213) 897-6793  
6 Facsimile: (213) 897-9395  
Attorneys for Complainant

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO August 12 2012  
BY [Signature] ANALYST

7  
8 BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
9 DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

10 In the Matter of the Petition to Revoke  
11 Probation Against,

Case No. D1-2006-174257

12 BROWNELL PAYNE, M.D.  
5118 Showboat Lane  
13 Culver City, CA 90230  
Physician's and Surgeon's Certificate No. A  
14 26350

PETITION TO REVOKE PROBATION

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

19 I. Linda K. Whitney (Complainant) brings this Petition to Revoke Probation solely in  
20 her official capacity as the Executive Director of the Medical Board of California, Department of  
21 Consumer Affairs.

22  
23 2. On or about October 25, 1974, the Medical Board of California issued Physician's and  
24 Surgeon's Certificate number A 26350 to BROWNELL PAYNE, M.D. (Respondent). The  
25 Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought  
26 herein and will expire on August 31, 2010, unless renewed.

27 ///

3. In a disciplinary action entitled "In the Matter of Accusation Against Brownell H. Payne, M.D." Case No. 06-2006-174257, the Medical Board of California issued a decision, effective May 15, 2009 (the "2009 Decision"), in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's was placed on probation for a period of five (5) years with certain terms and conditions. A copy of the 2009 Decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This Petition to Revoke Probation is brought before the Medical Board of California (Board), under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division' deems proper.

### FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply: PACÉ Program)

6. At all times after the effective date of Respondent's probation, Condition 16 of the 2009 Decision states in pertinent part:

"Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in

a clinical training or educational program equivalent to the Physician Assessment and

Clinical Education ("P.A.C.E.") Program offered at the University of California - San Diego

1. California Business and Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code, section 2000, et seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

1 School of Medicine ("Program").

2  
3 ... Respondent shall comply with Program recommendations.

4 At the completion of any additional educational or clinical training, Respondent  
5 shall submit to and pass an examination. The Program's determination whether or not  
6 Respondent passed the examination or successfully completed the Program shall be  
7 binding.

8  
9 Respondent shall complete the Program not later than one year after Respondent's  
10 initial enrollment unless the Board or its designee agrees in writing to a later time for  
11 completion.

12 Failure to participate in and complete successfully all phases of the clinical  
13 training program outlined above is a violation of probation.

14 7. To date, Respondent has failed to submit all documents needed by PACE and has  
15 failed to make full payments required to enroll in the PACE program, thereby violating his  
16 probation.  
17

18 SECOND CAUSE TO REVOKE PROBATION

19 (Failure to Comply: Practice Monitor)

20 8. At all times after the effective date of Respondent's probation, Condition 19 of the  
21 2009 Decision states in pertinent part:

22 "Commencing within 60 calendar days of the effective date of this Decision, and  
23 continuing throughout probation, respondent's practice shall be monitored by the  
24 approved monitor...  
25

26  
27 If the monitor resigns or is no longer available, respondent shall...submit to the  
28

1 Board or its designee, for prior approval, the name and qualifications of a replacement  
2 monitor... If respondent fails to obtain approval of a replacement monitor within 60 days  
3 of the resignation or unavailability of the monitor, respondent shall be suspended from the  
4 practice of medicine until a replacement monitor is approved and prepared to assume  
5 immediate monitoring responsibility...

6 9. Respondent's probation is subject to revocation because he failed to comply with  
7 Condition 19 of the 2009 Decision, referenced above. The facts and circumstances regarding this  
8 violation are as follows:  
9

10 A. On or about September 2009, respondent informed the Board that Dr. James W.  
11 Futrell would act as respondent's practice monitor.

12 B. The Board then contacted Dr. Futrell, who stated that he was unsure whether or not  
13 he would be able to act as respondent's practice monitor. Dr. Futrell also stated that he would  
14 contact the Board regarding his final decision after he read the agreement.  
15

16 C. On or about February 17, 2010, respondent informed the Board that Dr. Futrell would  
17 not be his practice monitor. The Board then advised respondent that he had sixty (60) days to  
18 find another practice monitor.

19 D. To date, respondent has not found a replacement practice monitor, thereby violating  
20 his probation.

21 THIRD CAUSE TO REVOKE PROBATION

22 (Failure to Comply: Non-Payment for Psychiatric Evaluation)

23 10. At all times after the effective date of Respondent's probation, Condition 20 of the  
24 2009 Decision states in pertinent part:  
25

26 "Within 60 days of the effective date of this Order Respondent shall undergo and  
27 complete a psychiatric evaluation... Respondent shall bear the costs of the psychiatric  
28

1 evaluation and any psychological testing..."

2 11. Respondent's probation is subject to revocation because he failed to comply with  
3 Condition 20 of the 2009 Decision, referenced above. The facts and circumstances  
4 regarding this violation are as follows:

5 A. A review by the Board's Probation Unit discovered that respondent has completed  
6 and passed the psychiatric evaluation.

7 B. However, to date, Respondent has not paid said costs associated with the psychiatric  
8 evaluation, thereby violating his probation.  
9

10 DISCIPLINE CONSIDERATIONS

11 12. To determine the degree of discipline, if any, to be imposed on Respondent,  
12 Complainant alleges that on or about April 5, 1993 (the "1993" Decision), in a prior disciplinary  
13 action entitled In the Matter of the Accusation Against Brownell H. Payne, M.D., before the  
14 Medical Board of California, in Case No. D-3678, Respondent's license was placed on five (5)  
15 years probation with terms and conditions after he was convicted of grand theft for submitting  
16 false/fraudulent Medi-Cal claims for supervising the rendering of anesthesia services at two  
17 medical clinics. The 1993 decision is now final and is incorporated by reference as if fully set  
18 forth.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28



PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking the probation that was granted by the Board in Case 06-2006-174257 and imposing the disciplinary order that was stayed, thereby revoking Physician's and Surgeon's Certificate No. A 26350 issued to Respondent;

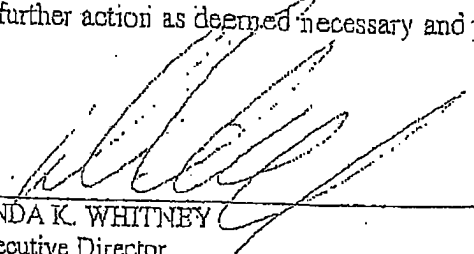
2. For the grounds stated, revoking or suspending his Physician's and Surgeon's Certificate;

3. Revoking, suspending or denying approval of his authority to supervise physicians' assistants pursuant to section 3327 of the Code;

4. Ordering him to pay the Medical Board of California the costs of probation monitoring, if placed on probation; and

5. Taking such other and further action as deemed necessary and proper.

DATED: August 12, 2010

  
LINDA K. WHITNEY  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
Complainant

LA2010502699  
pet revoke prob.rtf